Supreme Court, U.S.
FILED

(1) 95 1838 MAR 1 - 1996

OFFICE OF THE CLERK

No. _____

In the

Supreme Court of the United States

October Term 1995

FRED RUCKER,

Petitioner,

v

Illinois Civil Service Commission, Bruce Finne,
The Illinois Department of Central Management Services
and Stephen B. Schnorf,

Respondent,

PETITION FOR A WRIT OF
CERTIORARI TO THE ILLINOIS
COURT OF APPEALS,
FOURTH DISTRICT

PETITION FOR A WRIT OF CERTIORARI

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25 pp

QUESTIONS PRESENTED

1. Whether Petitioners employment status was a property interest protected by the Due Process Clause of the Fourteenth Amendment and (2) assuming that the explanation for his discharge was false, whether that false explanation deprived him of an interest in liberty protected by that Clause.

2. Whether the State Court of Appeals erred in affirming The Civil Service Commission's decision not to grant a hearing.

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IN THE SUPREME COURT OF THE UNITED STATES
October Term 1995

Fred Rucker, Petitioner

v

Illinois Civil Service Commission, Bruce Finne,
Illinois Department of Central Management Services,
and Stephen b. Schnorf, Respondents

PETITION FOR A WRIT OF CERTIORARI
TO THE ILLINOIS COURT OF APPEALS
FOR THE FOURTH DISTRICT

Fred Rucker respectfully petitions for a writ of certiorari to review the judgment of the State Court of Appeals in this case.

OPINION BELOW

The decision below is contained in Appendix A.

JURISDICTION

The jurisdiction of the Court is invoked under 28 U.S.C. 1254 (i).

STATUTORY PROVISION INVOLVED

Under 20 ILCS 415/10-(12) The Civil Service Commission shall have duties and powers: To hear or conduct investigations as it deems necessary of appeals of layoff filed by employees appointed under Jurisdiction B after examination provided that such appeals are filed

within 15 calendar days following the effective date of such layoff and are made on the basis that the Department of Central Management Services rules relating to layoff have been violated or have not been complied with.

All hearings shall be public. A decision shall be rendered within 60 days after receipt of the Transcript of the proceedings. The Commission shall order the reinstatement of employee if it is proven that the provision of the Personnel Code or of the Rules of the Department of Central Management Services relating to layoff have been violated or have not been complied with. In connection therewith, the Commission may administer oaths, subpoena witnesses, and compel the production of books and papers.

STATEMENT

Petitioner's job was eliminated purportedly due to "lack of funds." The Agency (The Illinois Department of Children and Family Services) alleged that the layoff was carried out under a "Reorganization Plan" approved by the Director of Central Management Services. This Petitioner's layoff was effectuated in September of 1992 - the "Reorganization", under which Petitioner's job was eliminated, was conducted without the approval of the Director of Central Management Services as required by law. The "approved" plan was not available through the Freedom of Information Act months after the layoff took place. See Penrod v Department of Corrections, 72 Ill. App. 3d 331 N.E. 2d 59,62. The Appellate Court, First District, Goldberg, P.J., held that: "Department of Personnel's implied finding that employee's layoff resulted from departmental reorganization was contrary to the manifest weight of the evidence" In this case, the elimination of Petitioners job was arbitrary and capricious. The Reorganization Plan was never approved as the record shows.

Because Petitioner's non-probationary job was eliminated without approval, Petitioner's constitutional rights under the Fourteenth Amendment were violated.

A. Proper Notice.

Included under the Due Process Clause is the provision of proper "notice" of any adverse action. The official documents notifying Petitioner of his layoff were issued without the required signatures of the Director of Central Management Services and the Director of the (Department of Children and Family Services). (Appendix C)

B. The Decision of the Appeals Court was Defective.

Under 80 Illinois Administrative Code Chapter I Section 303. 370 - Incomplete Forms - Any information placed on a form or any modification or alteration of existing information made on a form subsequent to having been signed by an employee shall be null and void insofar as it may affect the employee, the employees position or condition of employment. Any employee required to sign any form prepared pursuant to these Rules shall be given a copy of it at the time the employee's signature is affixed. - Conversely, for a Notice of adverse action to become effective, it must be signed by the appropriate state officials - specifically the Director of Central Management Services as well as the Director of the Agency. This was never done, thus the provision for "notice" under the Due Process Clause was never satisfied. The appeals Court was in error in concurring that a hearing was not justified.

IMPORTANCE OF QUESTIONS PRESENTED

When an Agency is in violation of State law the Civil Service Commission has the duty and the authority to hear the aggrieved employee and to direct compliance in writing.

When the Civil Service Commission neglects this responsibility and ignores the infractions presented, the question becomes significant to the public in that the legislative intent is frustrated and a fraud is perpetrated on the citizens of the State. It is seldom that the supervisory authority of this Court is more necessary than when the public's interest is at issue.

In Vitek v Jones, 445 U.S. 480 (1980) the Court pointed out that minimum procedural requirements are a matter of federal law, they are not diminished by the fact that the State may have specified its own procedures that it may deem adequate for determining the preconditions to adverse official action. "This conclusion was reiterated in Logan v Zimmerman Brush Co., 455 U.S. 422 (1982) where this Court reversed the lower Court's holding that because the entitlement arose from a state statue, the legislature had the prerogative to define the procedures to be followed to protect that entitlement. The Court continues with, "If a clearer holding is needed, we provide it today. The point is straight forward: The Due Process Clause provides that certain substantive rights - life, liberty, and property - cannot be deprived except pursuant to constitutionally adequate procedures. The categories of substance and procedure are distinct. Were the rule otherwise, the Clause would be reduced to a mere tautology. "Property" cannot be defined by the procedures provided for its deprivation any more than can life or liberty. The right to due process is conferred, not by legislative grace, but by constitutional guarantee. While the legislature may elect not to confer a property interest in public employment, it may not constitutionally authorize the deprivation of such an interest, once conferred, without appropriate procedural safeguards." An essential principle of due process is that a deprivation of life, liberty or property "be preceded by notice and opportunity for hearing appropriate to the nature of the case."

Mullane v Central Hanover Bank & Trust Co., 339 U.S. 306, 313 (1950).

REASONS FOR GRANTING THE PETITION

While the Personnel `ode allows for layoffs and elimination of positions due to "lack of funds," it also provides that procedures be followed when administering adverse actions against its employees. The Illinois State Constitution in its Bill of Rights protects its citizen's property rights, which is tantamount to the protection of property and liberty rights under the Fourteenth Amendment.

In the Board of Regents v Roth 408 U.S., 564 it was held that: "Property interest are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law---." It further states: "While many controversies have raged about the Due Process Clause, it is fundamental that except in emergency situations, due process requires that when a State seeks to terminate a protected interest -- it must afford a hearing."

A conflict of opinions exists between the Appellate Court for the First District and the Fourth District of Illinois. i.e. Penrod v Dept. of Corrections and this case.

With two cases presenting virtually identical questions and similar evidence differing only in the agencies involved, (DCFS and Department of Corrections), the decisions are vastly different. The Court's supervision is warranted to insure conformity in the two lower court rulings.

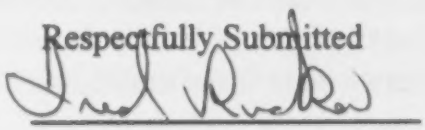
CONCLUSION

"The fundamental requisite of due process of law is the opportunity to be heard." Grannis v Ordean, 234 U.S. (1914) "The hearing must be at a meaningful time and a meaningful manner" Armstrong v Manzo, 380 U.S. 545,552 (1965). In the present context these principles require that an [employee] have timely and adequate

notice detailing the reasons for a proposed termination, and an effective opportunity to defend by confronting any adverse witnesses and by presenting his own arguments and evidence orally. These protected rights are important because they allow challenge to proposed terminations resting on incorrect premises or misapplication of rules or policies such as in this case.

The petition for certiorari should be granted.

Respectfully Submitted



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APPENDIX A

ILLINOIS SUPREME COURT
JULEANN HORNYAK, CLERK
SUPREME COURT BUILDING
SPRINGFIELD, ILL 62706
(217) 782-2035

December 6, 1995

Mr. Fred Rucker
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No. 79772 - Fred Rucker, petitioner, v. The Illinois Civil Service Commission et al., respondents. Leave to appeal, Appellate Court, Fourth District

The Supreme Court today DENIED the petition for leave to appeal in the above entitled case.

The mandate of this Court will issue to the Appellate Court on December 28, 1995.

NO. 4-94-0909

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
JUL 14 1995
Clerk of the
Appellate Court, 4th Dist.

FRED RUCKER, Plaintiff-Appellant, v. THE ILLINOIS CIVIL SERVICE COMMISSION, ILLINOIS DEPARTMENT OF CHILDREN & FAMILY SERVICES, STERLING M. RYDER ILLINOIS DEPARTMENT OF CENTRAL MANAGEMENT SERVICES, and STEPHEN B. SCHNORF, Defendants-Appellees	) Appeal from) Circuit Court of) Sangamon County) No. 93MR235))))) Honorable) Richard J. Cadagin,) Judge Presiding.

ORDER

In September 1992, the Department of Children and Family Services (DCFS) laid off plaintiff, Fred Rucker, as part of a department reorganization due to lack of funds. In July 1993, the Illinois Civil Service Commission (Commission) upheld plaintiff's layoff. In September 1994, the circuit court affirmed the Commission's decision. On appeal, plaintiff argues that (1) his layoff violated section 4 of the Personnel Code (Code) (20 ILCS 415/4 (West 1992)); and (2) the Commission improperly denied him an administrative hearing. We affirm.

I. BACKGROUND

Plaintiff was employed by DCFS as a supervisor in the title IV-E enhancement unit in Cook County from October 1, 1989, through September 18, 1992. Pursuant to budget cuts, DCFS enacted a layoff plan to eliminate 50 management positions. As part of the plan, DCFS reorganized the title IV-E enhancement unit by abolishing the Cook County unit and establishing two new subordinate positions within the Springfield unit. As a result, plaintiff's position was eliminated, he was laid off, and the two subordinates from the Cook County unit were reassigned to Springfield.

In October 1992, plaintiff appealed his layoff to the Commission, alleging that the "lack of funds" rationale for his layoff was due, in part, to DCFS' illegal contract with management Services of Illinois (MSI). DCFS had entered into the original contract with MSI in May 1991. Under the contract, MSI agreed to provide a staff of 20 full-time positions to provide technical assistance to enhance the DCFS' Federal financial recovery for all title IV-E eligible cases. The contract stipulated that MSI was an independence contractor and did "not acquire nay employment rights with the Department or the State of Illinois by virtue of the Contract."

In his complaint, plaintiff claimed that DCFS employees could perform the functions of the contractual employees with proper training. He also argued that the independent contractors were State employees subject to the Code. Plaintiff then requested the Commission to void the MSI contract, order DCFS to create permanent positions to perform the duties of the contractual employees, and reinstate him into one of those positions. He argued that if the contract were canceled, DCFS would have funds to avoid his layoff.

DCFS argued that it could not unilaterally move funds from one budgetary line to another to avoid layoffs. DCFS submitted a letter dated August 27, 1992, from Tom Swoik, DCFS deputy director, to plaintiff justifying the decision to reorganize plaintiff's unit. According to the letter, there was a backlog of nearly 1,000 cases in

plaintiff's unit in 1992. DCFS transferred the cases to the Springfield unit, which resolved the backlog in less than one month, yielding an additional $1.25 million in title IV-E receipts. In the entire year prior to the layoff, plaintiff's staff yielded only between $2 million and $3 million in title IV-E receipts. DCFS then decided it would be more efficient to abolish the Cook County unit and process all the cases in Springfield.

In June 1992, DCFS submitted its proposed layoff plan to the Department of Central Management Services (CMS). In July 1992, plaintiff was notified of his impending layoff due to "a reduction in force due to a lack of funds." In September 1992, the Director of CMS approved plaintiff's layoff effective September 18, 1992. Plaintiff submitted no evidence before the Commission to challenge DCFS' rationale for the reorganization and layoff. Plaintiff attached several documents to his appellate brief to challenge the rationale for his layoff. However, because they were not part of the administrative record, they are not properly before this court and cannot be used to supplement the record. See 735 ILCS 5/3-110 (West 1992); Cottrill v. Russell (1993), 253 Ill. App. 3d 934, 939, 625 N.E. 2d 888, 891.

In June 1993, the Commission's staff submitted its proposed findings to plaintiff along with a recommendation that the Commission deny his appeal. Plaintiff was given an opportunity to respond to the Commission staff's findings. The staff concluded that the layoff was due to DCFS' decision to eliminate the Cook County title IV-E enhancement unit. The staff also concluded that the Commission lacked authority to cancel the contract and transfer funds from one budgetary line to another to pay plaintiff's salary, and that plaintiff was not displaced by a contractual employee.

In July 1993, plaintiff responded to the proposed findings, contending that the Commission did have authority to reverse the layoff because the MSI contract violated section 4 of the Code. He argued that he was illegally precluded form obtaining re-employment in a position under the MSI contract because the contract positions were not subject to the Code. In July 1993, the Commission adopted the staff's proposed

findings as its final decision. In September 1994, the circuit court affirmed the Commission's decision. This appeal followed.

II. ANALYSIS

An administrative agency's findings of fact must be sustained unless they are against the manifest weight of the evidence. (Envirite Corp. v. Illinois Environmental Protection Agency (1994), 158 Ill. 2d 210, 214, 632 N.E. 2d 1035, 1037.) Reviewing courts generally afford deference to an agency's statutory interpretation unless it is erroneous. (City of Decatur v. American Federation of State, County & Municipal Employees, Local 268 (1988), 122 Ill. 2d 353, 361, 522 N.E. 2d 1219, 1222.) Plaintiff first argues that the DCFS layoff plan violated section 4 of the Code because of the MSI contract. Specifically, he argues the contractual employees were State employees, and therefore, should have been subject to the layoff plan. Section 4 of the Code provides: "All offices and positions of employment in the service of the State of Illinois shall be subject to the provisions of this Act unless exempted in this or nay other Act." 20 ILCS 415/4 (West 1992).

Plaintiff argues the Commission failed to address this issue in its decision. In the proposed findings, the Commission staff concluded that the issue advanced by plaintiff was that DCFS entered into unwise contracts for personal services when it could have used the money for his salary. However, plaintiff attempted to clarify the issue when he responded to the proposed findings. he stated that the MSI contract violated section 4 of the Code because the contractual employees were really State employees under the Code, and they were thus also subject to the layoff plan. The Commission adopted the staff's findings but did not comment on the legality of the contract.

Apparently, plaintiff claims the language of section 4 of the Code applies to independent contractors. Even if the Commission did not adequately consider this argument, a reviewing court can affirm and administrative agency's decision if there is nay legal basis in the record to support the agency's decision regardless of the agency's findings or reasoning. (General Motors Corp., Central Foundry division

v. Industrial Comm'n (1989), 179 Ill. App. 3d 683, 695, 534 N.E. 2d 992, 1000.) Section 4 of the Code is plainly limited to "offices and positions of employment in the service of the State." (20 ILCS 415/4 (West 1992)). The contractual employees are employed by the independent contractors, not the State. Furthermore, the MSI contract specifically states that the contractual employees are independent contractors and "[do] not acquire nay employment rights with the Department or the State of Illinois by virtue of [the] contract." we hold that section 4 of the Code is limited to employees who are actually employed by the State. Therefore, the Commission properly denied plaintiff's appeal.

Plaintiff next argues that the Commission improperly denied him an administrative hearing. The Commission may render its decision without affording a hearing whenever it "determines that not material issue of fact or law exists ***." (80 Ill. Adm. Code #1.100 (d) (1992-93)). Courts have upheld other decisions of the Commission without a hearing where the plaintiff was given an opportunity to respond at every step of the Commission's decision-making process and present arguments and evidence. (Cohen v. Civil Service Comm'n (1989), 188 Ill. app. 3d 554, 558-59, 544 N.E. 2d 1095, 1098). In this case, plaintiff was afforded the opportunity to respond throughout the appeal process to the Commission. he cannot point to nay instance where the Commission denied his request to submit evidence or documentation into the record. the Commission concluded that the reorganization of the title IV-E enhancement unit was justified by budget cuts and the inefficiency of the Cook County unit. we cannot say this determination is against the manifest weight of the evidence.

III. CONCLUSION

For the foregoing reasons we affirm.
Affirmed.
STEIGMANN, J., with COOK and LUND, JJ., concurring.

APPENDIX B

415/11. Hearing-Disciplinary action

11. Hearing - Disciplinary action. No officer or employee under jurisdiction B, relating to merit and fitness, who has been appointed under the rules and after examination, shall be removed, discharged or demoted, or be suspended for a period of more than 30 days, in any 12 month period, except for cause, upon written charges approved by the Director of Central Management Services, and after an opportunity to be heard in his own defense if he makes written request for a hearing, the Commission shall grant a hearing within 30 days. The time and place of the hearing shall be fixed by the Commission, and due notice thereof given the appointing officer and the employee. The hearing shall be public, and the officer or employee is entitled to call witnesses in his own defense and to have the aid of counsel. The finding and decision of the Commission, or the approval by the Commission of the finding and decision of the officer or board appointed by it to conduct such investigation, shall be rendered within 60 days after the receipt of the transcript of the proceedings. If the findings and decision is not rendered within 60 days after receipt of the transcript of the proceedings, the employee shall be considered to be reinstated and shall receive full compensation for the period for which he was suspended. The finding and decision of the Commission or officer or board appointed by it to conduct investigation, when approved by the Commission, shall be certified to the Director, and shall be forthwith enforced by the Director. In making its finding and decision, or in approving the finding and decision of some officer or board appointed by it to conduct such investigation, the Civil Service Commission may, for disciplinary purposes, suspend and employee for a period of time not to exceed 90 days, and in no event to exceed a period of 120 days from the date of any suspension of such employee, pending investigation of such charges. If the Commission certifies a decision that an officer or employee is to be retained in his position and if it does not order a suspension for disciplinary purposes, the officer or employee shall receive full compensation for any period during which he was suspended pending the investigation of the charges.

Nothing in this section shall limit the authority to suspend and employee for a reasonable period not exceeding 30 days, in any 12 month period.

Notwithstanding the provisions of this Section, an arbitrator of the Industrial Commission, appointed pursuant to Section 14 of the Workers' Compensation Act,[1] may be removed by the Governor upon the recommendation of the Commission Review Board pursuant to Section 14.1 of such Act.[2]

Notwithstanding the provisions of this section, a policy making officer of a State agency, as defined in the Employee Rights Violation Act,[3] shall be discharged form State employment as provided in the Employee Rights Violation Act, enacted by the 85th General Assembly.

415/11.a Review under Administrative Review Law

11a. All final administrative decisions of the Civil Service Commission hereunder shall be subject to judicial review pursuant to the provisions of the Administrative Review Law, as heretofore or hereafter amended.[1] The term "administrative decision" is defined as in Section 3-101 of the Code of Civil Procedure.[2] Laws 1955, p. 2208, 11a, added by Laws 1959, p. 1824, 1, eff. July 21, 1959. Amended by P.A. 82-783, Art. XI, 271, eff. July 13, 1982.

Formerly Ill.Rev.Stat.1991, ch. 127, 63b111a.

[1] 735 ILCS 5/3-191 et seq.

[2] 735 ILCS 5/3-101

415/11b. Reinstatement of suspended, discharged, or improperly laid off employee-Full compensation

11.b Every employee reinstated for the period for which he was suspended, discharged or improperly laid off shall receive full compensation for such period notwithstanding the fact that any person was employed to perform any duties of such employee during the time of such suspension, discharge or layoff. For purposes of this Section 11b, full compensation shall mean compensation such suspended, discharged or laid off employee would have earned in the position classification during the period of suspension, discharge or layoff less amounts earned by the employee from any other source and unemployment compensation payments received during such period. Laws 1955, p. 2208, 11b, added by P.A. 79-1153, 1, eff, Dec. 18, 1975. Amended by P.A. 81-725, 1, eff. Jan. 1, 1980.

Section 302.520 Indeterminate Layoff Procedure

a) An operating agency may request the indeterminating layoff of an employee because of lack of funds, material change in duties or organization or lack of work or the abolition of a position for any of these reasons. Based on class, agency, county or other designation, an indeterminate layoff shall be within organizational units justified by operations and approved prior to the layoff by the Director.

b) A proposed indeterminate layoff is subject to the approval of the Director before becoming effective and shall include the following in the organizational unit in which the indeterminate layoff if proposed.

1) a list of all employees showing status and total continuous service;
2) a listing of those employees to be laid off;
3) performance records of all employees affected by layoff plan;
4) an explanation of any layoff not in order of continuous service;
5) an explanation of the organizational unit selected, reflecting agency, facility, geographical, operational and other elements deemed relevant by agency head.

(Source: Amended at 9 111. Reg. 7907, effective May 15, 1985)

APPENDIX C

ILLINOIS DEPARTMENT OF CENTRAL MANAGEMENT SERVICES
PERSONNEL/POSITION ACTION FORM

1 — 01 PRINTED: 09/20/92 — 02 SOCIAL SECURITY NO.: 311-44-9394

EMPLOYEE INFORMATION

2

03 LAST NAME	FIRST	INIT	04 SEX	05 RACE	06 VET	07 EDUC	08 DATE OF BIRTH
RUCKER	FRED		M	B	N	S	11-28-44

3

09 STREET ADDRESS	10 CITY	11 COUNTY	12 STATE	13 ZIP CODE	13A NAT'L ORIG
1458 EAST 71ST PLACE	CHICAGO	016	IL	60619	129

4

14 PAY PLAN	15 PAY GRADE	16 PAY STEP	17 SALARY	18 PAY RATE	19 FULL/PT TIME	20 FUNDING SPD. CON	21 PAYROLL DEPT.	21 CODE APPROP	22 CORRECTED SOCIAL SECURITY NO.	22A BARGAINING UNIT CODE	22B PERF. CODE
4	07	00	2893.00	A	F	00	16	516			

5

23 CONTINUOUS SERVICE DATE	24 SENIORITY / DATE	25 CREDITABLE SERVICE DATE	26 APPT EXPIRATION DATE	27 STATUS	28 SUSPENSION/LOA RETURN DATE	29 APPT REQ. NO.	29A HANDI CAP
10-01-89		04-01-92	NO DATE	A	NO DATE		000

POSITION INFORMATION

6

30 POSITION TITLE (NAME)	31 POSITION NUMBER	32 EXMT CODE	33 WORKS COUNTY	34 AA AUTH.	35 AUDIT	36 POS DES COMP.
EXECUTIVE II	13852-16-20-420-00-01	0	016			

TRANSACTION INFORMATION

7

		37 TRANSACTION NAME	38 TRANS CODE	39 EFFECTIVE DATE	40 PRIORITY
LAST TRANS	1	SEPARATION LAYOFF	BA127	09-18-92	0
	2				
	3				
	4				
THIS TRANS	1				
	2				
	3				
	4				

CODES

STATUS
A-CERTIFIED
B-PROB. 3 MOS
C-PROB. 6 MOS
D-PROVISIONAL
F-EXEMPT
G-TEMPORARY
H-EMERGENCY
J-TRAINEE
K-TRAINEE
L-TRAINEE

RACE
A-AMERICAN INDIAN
B-BLACK
O-ORIENTAL
S-SPANISH AMERICAN
W-CAUCASIAN
X-OTHER

EXEMPT
0-NOT EXEMPT
1-PRIVATE SECRETARY
2-ADMINISTRATIVE HEAD
3-POLICY MAKER
4-UNSKILLED
5-LIC. ATTORNEY
6-OUT OF STATE
8-PARTIAL EXTENSION

EDUCATION
1-GRADE SCHOOL
2-SOME HIGH SCHOOL
3-H S GRAD OR GED
4-SOME COLLEGE
5-BA/BS
6-MA/MS
7-PHD/MS
8-OTHER DEGREE

REMARKS

8

EMPLOYEES SIGNATURE (REQ ON VOL ACTION)	DATE	AGENCY APPROVAL (OPTIONAL)	DATE
SIGNATURE OF PERSON SERVING SUBORDIC	DATE	AGENCY BUDGETARY (OPTIONAL)	DATE
BY MAIL ☐ IN PERSON ☐			
DIRECTOR OF CENTRAL MANAGEMENT SERVICES	DATE	AGENCY HEAD APPROVAL	DATE